

A **IKATAN KELAB-KELAB MELAYU**  
**NEGERI PULAU PINANG & ORS**

v.

B **YAYASAN BUMIPUTRA PULAU PINANG & ORS**  
**AND ANOTHER APPEAL**

FEDERAL COURT, PUTRAJAYA  
HASHIM YUSOFF FCJ  
SURIYADI HALIM OMAR FCJ  
C AHMAD MAAROP FCJ  
HASAN LAH FCJ  
ZALEHA ZAHARI FCJ  
[CIVIL APPEALS NO: 02(i)-54-07-2012(P) &  
02(i)-55-07-2012(P)]  
D 28 OCTOBER 2013

E **CIVIL PROCEDURE:** *Striking out - Appeal against - Locus standi - Action for breach of trust and fiduciary duties - Whether appellants had necessary locus standi to initiate action - Whether beneficiary under trust had locus standi to bring action in breach of trust against company limited by guarantee under Companies Act 1965 pursuant to objective of trust - Whether appellants had a share, or was a trustee or director of respondents - Whether appeal dismissed*

F **CIVIL PROCEDURE:** *Locus standi - Commencement of action - Appellants suing respondents for breach of trust and fiduciary duties - Whether appellants had necessary locus standi to initiate action - Whether beneficiary under trust had locus standi to bring action in breach of trust against company limited by guarantee under Companies Act 1965 pursuant to objective of trust - Whether appellants had a share, or was a trustee or director of respondents - Whether appeal dismissed*

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H The first respondent was a foundation under the Companies Act 1965 ('CA'), established in accordance with the New Economic Policy to selectively acquire the reserved shares in enterprises on trust for Pulau Pinang Malays. The appellants claimed to represent Malays in Pulau Pinang. On 22 August 2000, two sale and purchase agreements ('SPA') were entered into between the third respondent and the eighth respondent, and between the ninth respondent and the eighth respondent for the sale and joint venture of three pieces of properties situated in Seberang Prai

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Utara Penang ('the said properties'). The said properties were acquired by the third and ninth respondents which were fully owned companies of the first respondent and were then transferred to the eighth respondent for the purpose of the joint venture. The appellants alleged that the value of the properties transferred to the eighth respondent was at an undervalue resulting in a loss to the Penang Malays. The appellants then filed a suit in the High Court against the respondents for breach of trust and breach of fiduciary duties and unjust enrichment, seeking a declaration that the transfer of the said properties was null and void. The respondents then filed an application under O. 18 r. 19(1)(a), (b) and (d) of the Rules of the High Court 1980 ('RHC') to strike out the appellants' writ of summons and statement of claim on the ground that the appellants did not have the *locus standi* to commence the action against the respondents. The High Court allowed the striking out application. The Court of Appeal, in affirming the High Court's decision, held that since the registered owners of the land were the third and ninth respondents, and since the appellants were not members of the third and ninth respondents, they had no *locus standi* to sue the respondents. Leave was granted to the appellants to appeal against the decision of the Court of Appeal. The leave application was over the question as to whether a beneficiary under a trust had *locus standi* to bring an action in breach of trust against a company limited by guarantee incorporated under the CA pursuant to the objective of the trust.

**Held (dismissing appeal)**

**Per Hashim Yusoff FCJ delivering the judgment of the court:**

- (1) To enable the appellants initiate this action, they had to show that they had the necessary *locus standi* (*Government of Malaysia v. Lim Kit Siang & Another Case*; refd). The said properties were registered in the names of the third and ninth respondents which in turn were fully owned by the first respondent. Although the first respondent was formed to help the economic position of the Penang Malays who were supposed to be the beneficiaries for the purpose of forming the first respondent, *locus standi* would be a necessary precondition before any party could bring the action. There was, however, no evidence to show that the appellants neither had a share nor became a trustee or director of the first, third or ninth respondents. (paras 34 & 35)

- A (2) The appellants were suing the respondents for alleged breach  
of trust and fiduciary duties. However, the fundamental  
principles of company law could not be disregarded *ie*, the *sine*  
B *qua non* for the appellants to bring the action against the  
respondents was that the appellants had to be members of the  
third and ninth respondents. In the absence of such  
membership, the appellants had no *locus standi* to sue the  
respondents and therefore, the striking out made by the High  
Court was not wrong. There was no reason to differ with the  
decisions of the courts below. (paras 36 & 38)

C ***Bahasa Malaysia Translation Of Headnotes***

- Responden pertama adalah sebuah yayasan di bawah Akta  
Syarikat 1965 ('Akta'), ditubuhkan menurut Dasar Ekonomi Baru  
untuk memperolehi saham simpanan secara terpilih dalam  
D perusahaan amanah bagi orang Melayu Pulau Pinang. Perayu-  
perayu mendakwa bahawa mereka mewakili orang-orang Melayu di  
Pulau Pinang. Pada 22 Ogos 2000, dua perjanjian jual beli ('PJB')  
telah dimeterai antara responden ketiga dan responden kelapan,  
E dan antara responden kesembilan dan responden kelapan bagi  
penjualan dan usahasama tiga bidang hartanah yang terletak di  
Sebarang Prai Utara Pulau Pinang ('hartanah-hartanah tersebut').  
Hartanah-hartanah tersebut telah diperoleh oleh responden ketiga  
dan responden kesembilan yang merupakan syarikat-syarikat milikan  
F penuh dan kemudiannya, telah dipindah milik kepada responden  
kelapan bagi tujuan usahasama. Perayu-perayu mendakwa bahawa  
nilai hartanah yang telah dipindah milik kepada responden kelapan  
adalah nilai terkurang yang mengakibatkan kerugian kepada orang-  
orang Melayu di Pulau Pinang. Perayu-perayu memfailkan guaman  
G di Mahkamah Tinggi terhadap pihak responden atas pecah amanah  
dan pelanggaran kewajipan fidusiari dan pengkayaan tak patut,  
memohon perisytiharan bahawa pindah milik hartanah-hartanah  
tersebut adalah tidak sah dan terbatal. Responden-responden  
kemudian memfailkan satu permohonan di bawah A. 18 k. 19(1)(a),  
H (b) dan (d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT')  
untuk membatalkan writ saman dan pernyataan tuntutan perayu-  
perayu atas alasan bahawa perayu-perayu tidak mempunyai *locus*  
*standi* untuk memulakan guaman terhadap responden-responden.  
Mahkamah Tinggi membenarkan permohonan pembatalan.  
I Mahkamah Rayuan, dalam mengesahkan keputusan Mahkamah

Tinggi, memutuskan bahawa, oleh kerana pemilik-pemilik berdaftar hartanah tersebut adalah responden-responden ketiga dan kesembilan, dan memandangkan perayu-perayu bukan ahli responden ketiga dan kesembilan, perayu-perayu tidak mempunyai *locus standi* untuk menyaman responden-responden. Kebenaran telah diberikan kepada perayu-perayu untuk merayu terhadap keputusan Mahkamah Rayuan. Permohonan kebenaran adalah berkenaan persoalan sama ada benefisiari di bawah amanah mempunyai *locus standi* untuk membawa satu tindakan guaman pecah amanah terhadap syarikat yang terhad dengan jaminan yang telah diperbadankan di bawah Akta Syarikat 1965 dalam menjalankan objektif amanah.

**Diputuskan (menolak rayuan)**

**Oleh Hashim Yusoff HMP menyampaikan penghakiman mahkamah:**

- (1) Untuk membolehkan perayu-perayu memulakan tindakan ini, perayu-perayu harus menunjukkan bahawa mereka mempunyai *locus standi* (*Government of Malaysia v. Lim Kit Siang & Another Case*, dirujuk). Hartanah-hartanah tersebut telah didaftarkan dalam nama responden-responden ketiga dan kesembilan yang dimiliki penuh oleh responden pertama. Walaupun responden pertama telah ditubuhkan untuk membantu kedudukan ekonomi kaum Melayu di Pulau Pinang yang sepatutnya menjadi benefisiari bagi tujuan penubuhan responden pertama, *locus standi* adalah pra-syarat yang diperlukan sebelum mana-mana pihak boleh membawa tindakan guaman. Tiada keterangan yang menunjukkan bahawa perayu-perayu mempunyai saham atau dilantik sebagai pemegang amanah atau pengarah bagi pihak responden pertama, ketiga dan kesembilan.
- (2) Perayu-perayu menyaman responden-responden atas dakwaan pecah amanah dan pelanggaran kewajipan fidusiari. Walau bagaimanapun, prinsip-prinsip asas undang-undang syarikat tidak boleh diketepikan, iaitu ia adalah *sine qua non* untuk perayu-perayu menjadi ahli responden ketiga dan kesembilan untuk membawa tindakan guaman terhadap responden-responden. Dengan ketiadaan keahlian sebegitu, perayu-perayu tidak mempunyai *locus standi* untuk menyaman responden, maka pembatalan yang dibuat oleh Mahkamah Tinggi tidak salah. Tiada sebab untuk berlainan pendapat dengan keputusan mahkamah-mahkamah bawahan.

- A Case(s) referred to:**  
*Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 SC (*refd*)  
*Geh Cheng Hooi & Ors v. Equipment Dynamics Sdn Bhd* [1991] 1 CLJ 464 SC (*refd*)
- B** *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC (*refd*)  
*Mariam Shaik Mohd Omar v. Ong Chin Poh* [1994] 3 CLJ 635 HC (*refd*)  
*Tengku Abdullah Ibni Sultan Abu Bakar & Ors v. Mohd Latiff Shah Mohd & Ors And Other Appeals* [1997] 2 CLJ 607 CA (*refd*)  
*Tio Chee Hing & Ors v. Government of Sabah* [1981] 1 LNS 146 FC (*refd*)
- C** **Legislation referred to:**  
Pengurusan Danaharta Nasional Berhad Act 1998, s. 72  
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)  
Trustees (Incorporation) Act 1952, s. 2
- D** *For the appellants - Sulaiman Abdullah (Abdul Fareed Abdul Gafoor with him); M/s VM Mohan, Fareed & Co*  
*For the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 9th respondents - Ghazi Ishak (B Jeyasingam with him); M/s Ghazi & Lim*  
*For the 8th respondent - Ashok Kumar Mahadev Ranai (Lam Wai Loon & Shannon Rajan with him); Messrs Skrine*
- E** [Appeal from Court of Appeal; Civil Appeals No: P-02(IM)-1451-11 & P-02(IM)-1452-11]  
*Reported by Suhainah Wahiduddin*
- F**

## JUDGMENT

### Hashim Yusoff FCJ:

- G** [1] Two appeals were heard together *viz* 02(i)-54-07/2012 (P) and 02(i)-55-07/2012 (P).
- [2] This court had granted leave to the appellants to appeal against the decision of the Court of Appeal which had affirmed the decision of the High Court allowing the respondent's application to strike out the appellants' claim under O. 18 r. 19, Rules of the High Court 1980 ('RHC'). The appellant's successful leave application before us was over the following question:
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- I** Whether a beneficiary under a trust has *locus standi* to bring an action in breach of trust against a company limited by guarantee incorporated under the Companies Act 1965 pursuant to the objective of the trust?

**Background Facts**

[3] The appellants claim to represent Malays in Pulau Pinang.

[4] The first respondent is a foundation incorporated on 8 July 1980 under the Companies Act 1965 and is a company limited by guarantee. Article 1 of the memorandum of association states that the foundation is established in accordance with the new economic policy to selectively acquire the reserved shares in enterprises on trust for Pulau Pinang Malays.

[5] The articles of association ('AA') of the first respondent proposes to register 100 members and the first two members shall be subscribers to the memorandum of the association ('MOA') and any person desiring to be a member must apply in writing to the foundation and upon admission the secretary shall cause his name to be recorded in the register of members.

[6] Article 5 of the AA provides that "that subscribers to the memorandum of association and such other persons as shall be admitted to membership in accordance with these regulations and no others shall be members of the foundation and shall be entered in the register of members accordingly."

[7] The board of trustees ('BOT') is responsible for the management of the affairs of the foundation and the powers of the board are set out in art. 25 which includes the power to expand the funds of the foundation, the power to acquire in the name of the foundation, the power to delegate any powers to any committee, to enter into contracts on behalf of the foundation, to borrow money, to make and from time to time to repeal or alter regulations and by laws etc.

[8] Two sale and purchase agreements (SPA) dated 22 August 2000 were entered into between the third respondent and the eighth respondent, and between the ninth respondent and the eighth respondent for the sale and joint venture of three pieces of properties situated in Seberang Prai Utara Penang ('the said properties'). The said properties were acquired by the third and ninth respondents which were fully owned companies of the first respondent. The said properties were then transferred to the eighth respondent for the purpose of the joint venture. The appellants alleged that the value of the properties transferred to the eighth respondent was at an undervalue resulting in a loss of RM115,474,303.30 to the Penang Malays.

- A [9] The appellants then filed a suit against the respondents for breach of trust and/or breach of fiduciary duties and unjust enrichment in the High Court, seeking a declaration that the transfer of the said properties was null and void. The respondents then filed an application under O. 18 r. 19(1)(a), (b) and (d)
- B Rules of the High Court 1980 ('RHC') to strike out the appellants writ of summons and statement of claim on the ground that the appellants did not have the *locus standi* to commence the action against all of the respondents.

C **At The High Court**

- [10] The learned trial judge held that *locus standi* was a precondition before any party could bring an action. His Lordship further opined that the allegation that the appellants/plaintiffs had the necessary *locus standi* by virtue of being the beneficiary to the objective of the establishment of the first respondent did not mean that they had the *locus standi* as recognised under the law. The mere fact of being the beneficiary was not sufficient to form the capacity and *locus standi* under the law. On that score, the learned trial judge allowed the striking out application by respondent 1, 2,
- D 3, 4, 5, 6, 7 and 9 under O. 18 r. 19(1)(a) of the Rules of the High Court 1980 ('RHC').
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**At the Court Of Appeal**

- F [11] The Court of Appeal in its broad grounds of judgment, held that since the registered owners of the three pieces of land were respondents No. 3 and 9 which were companies registered under the Companies Act 1965, and since the appellants/plaintiffs were not members of respondent 3 and 9, they had no *locus standi* to sue the respondents as they had no reasonable cause of action against the respondents.
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**The Appellants' Contention**

- H [12] Learned counsel for the appellants submitted that it is trite law that under O. 18 r. 19 of the RHC 1980, a cause of action can only be struck out when it is 'plain and obvious' and that it is not so in this case. (See the case of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7).
- I [13] It was argued that the first respondent was established as a company 'limited by guarantee' and that there were only two members of the company who did not own the first respondent. It was managed by a Board of Directors responsible in carrying

out its objectives in accordance with its memorandum of association and articles of association. The appellants' case was that the first respondent was a trustee holding assets in trust for and on behalf of the benefit and interest of the Penang Malays through the third and ninth respondents which were wholly owned subsidiaries of the first respondent.

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[14] Learned counsel for the appellant further submitted that the first respondent through its directors (who had been named as co-respondents) herein had unilaterally exercised their discretion by causing the transfer of the said properties to the eighth respondent at an undervalue with an estimated loss of RM115,474,303.30 to its beneficiaries. Thus, the first respondent and the directors respondents had committed a breach of trust.

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[15] Reference was made to general authorities to support the contention that the respondents owed a fiduciary duty to the beneficiaries. (See: *Tengku Abdullah Ibni Sultan Abu Bakar & Ors v. Mohd Latiff Shah Mohd & Ors And Other Appeals* [1997] 2 CLJ 607; *Geh Cheng Hooi & Ors v. Equipment Dynamics Sdn Bhd* [1991] 1 CLJ 464; [1991] 1 CLJ (Rep.) 133).

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[16] Learned counsel for the appellant therefore argued that there was a triable issue as to whether there was a breach of trust committed by respondents 1, 4, 5, 6 and 7 and it was not a plain and obvious case for striking out under O. 18 r. 19 RHC 1980.

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#### **The Respondents' Submission**

[17] Learned counsel for all the respondents (except eighth respondent) submitted that since the first respondent was a company 'limited by guarantee' under the Companies Act 1965, the provisions of the Companies Act 1965 apply. It is not disputed that there were only two members of the Respondent 1. Therefore the appellants need to show that they were also members of the first respondent before they could initiate any action against the first respondent.

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[18] It was brought to our attention that the leave question as framed, refers only to the first respondent, but there is no relief prayer sought against the first respondent in the appellants' statement of claim. Therefore there really is no cause of action against the first respondent. More so when the property is vested in Danaharta.

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- A [19] Reference was made to Gower's *Principles of Modern Company Law* 6th edn whereby it is stated there are three functions of the modern company. From the functional view point there are today three distinct types of companies:
- B (a) Companies formed for purposes other than the profit of their members ie those formed for social, charitable or quasi-charitable purposes. In this case incorporation is merely a mere modern and convenient substitute for the trust;
- C (b) Companies formed to enroll a single trader or a small body of partners to carry on a business; and
- (c) Companies formed in order to enable the investing public to share in the profits of an enterprise without taking any part in its management.
- D [20] Learned counsel for the respondents submitted that if it was a charitable organisation, then there was no question of a trust.
- [21] Since the appellants could not show that they were members of the first respondent, they accordingly have no *locus standi* to bring the action against the respondents.
- E [22] Counsel then referred to the case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12 where it was held that the statement of claim must disclose a cause of action in order to enable the plaintiff to maintain the suit.
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- Submission Of Counsel For The Eighth Respondent**
- G [23] Apart from adopting wholly the submission of counsel for the other respondents, learned counsel for the eighth respondent submitted that the question posed before this court did not affect the eighth respondent.
- H [24] Counsel argued that the said properties were actually charged to Arab-Malaysian Merchant Bank and vested in Pengurusan Danaharta Nasional Berhad. That being so, the appellant's suit to nullify the joint venture agreement and to restrain parties from disposing off any part of the said properties after ten years was an attempt to circumvent the provision of s. 72 of the Pengurusan
- I Danaharta Nasional Berhad Act 1998 which reads as follows:

72 Limits on the grant of orders of court

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Notwithstanding any law, an order of a court cannot be granted—

(a) which stays, restrains or affects the powers of the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this act;

B

(b) which stays restrains or affects any action taken, or proposed to be taken, by the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;

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(c) which compels the Corporation, Oversight Committee, Special Administrator or Independent Advisor to do or perform any act, and any such order, if granted, shall be void and unenforceable and shall not be the subject of any process of execution whether for the purpose of compelling obedience of the order or otherwise.

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[25] Counsel then submitted that since the first respondent being a company limited by guarantee was not capable of being a trust. Reference was made to s. 2 of the Trustees (Incorporation) Act 1952 which states:

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2(1) Trustees may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees or trustee may apply, in the manner hereinafter provided, to the Minister for a certificate of registration of the trustees of such body or association of persons as a corporate body.

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[26] In this case, it was submitted that no such application had been made to the Minister to set up a trust.

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[27] Learned counsel also raised the issue of limitation and referred us to the High Court case of *Mariam Binti Shaik Mohd Omar v. Ong Chin Poh* [1994] 3 CLJ 635; [1994] 3 MLJ 419 which referred to the Federal Court case of *Tio Chee Hing & Ors v. Government of Sabah* [1981] 1 LNS 146; [1981] 1 MLJ 207. In that case defendant did not enter appearance or file a defence but applied to strike out the statement of claim on the ground, *inter alia*, that the claim was statute barred. The learned trial judge held that the claim was statute barred and he dismissed the claim. The plaintiffs appealed to the Federal Court. The Federal Court dismissed the appeal and, *inter alia*, held:

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- A (2) in any event, the appellant's claim was clearly statute barred and not maintainable against a defence that relied on limitation.

**Court's Decision**

- B [28] The crux of the issue raised in the instant appeal is whether a beneficiary under a trust has *locus standi* to bring an action in breach of trust against a company limited by guarantee and whether the said action was correctly struck out by the High Court under O. 18 r. 19 of the RHC 1980.
- C [29] Both the High Court and Court of Appeal held that the appellants had no *locus* and therefore allowed the striking out application by respondents.
- D [30] In the case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63, Lim Kit Siang was seeking the aid of the court to interfere in the affairs of a proposed privatisation contract for the construction of the North & South Highway due to be signed between the UEM Engineers (M) Berhad (UEM) and the Government of Malaysia, by asking for a declaration that the letter of intent issued by the Government to UEM in respect of the North & South Highway (NSH) contract was invalid and based on that premise he also prayed for a permanent injunction to restrain UEM from signing it with the government. He then filed a suit to that effect and at the same time applied by way of an *ex parte* summons in chambers for an *interim* injunction against UEM to restrain it from signing the NSH contract. The High Court refused the said application, but on appeal, the Supreme Court ordered the *interim* injunction.
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- G [31] Soon after that UEM and the Government applied to the High Court to have the *interim* injunction set aside and suits struck out on the ground that they disclosed no reasonable cause of action and also for lack of *locus standi*, in addition to being frivolous, vexatious and abuse of the court's process. The High Court dismissed both applications. On appeal to the Supreme Court, it was held, *inter alia*:
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- I (1) On going through the Respondent's statement of claim the Court found nothing in it which shows the evidence of a factual situation. The Respondent has no legal relationship with UEM which would indicate the existence of any legal

right or duty in the relationship between them. Therefore the Respondent's suit against UEM is unmaintainable and its application to strike it out should therefore be granted and consequently its appeal should be allowed.

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- (2) Since the suit against UEM is not maintainable there was no question of the Respondent's entitlement to remedy of declaration and injunction permanent or otherwise. The *interim* injunction which was granted against UEM has no legal basis. Also the issue of the *interim* injunction against UEM is absolutely contrary to the expressed words of Section 29 of the Government Proceedings Act 1956 as it has in effect indirectly restrained the Government.

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- (3) In this case, not only has the Respondent no cause of action against UEM but the Court also has no power to issue the injunction *interim* or otherwise. The Respondent's suit against UEM is therefore unmaintainable as it is also vexatious, frivolous and constitutes an abuse of the judicial process.

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- (4) There is nothing in the Constitution or in the Government Contracts Act which imposes a legal duty on the Government to consult and accept the views of any taxpayer or group of taxpayers or to hear objections. However, there may be moral and political obligations on the part of the Government to be mindful of taxpayers' objections but this is not a basis for the Court to find a legal duty giving any taxpayer *locus standi* to maintain this suit as such moral obligations should be addressed at other forums.

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[32] Salleh Abas LP in that case said at p. 222 "Going through the respondent's statement of claim I found nothing in it which shows the existence of such factual situation. The respondent has no legal relationship with UEM, which would indicate the existence of any legal right or duty in the relation between them. He is a complete stranger to the company. It is not shown that the respondent is a shareholder or has any interest, directly or indirectly, in the running of the affairs of UEM nor has UEM done any wrong to the respondent or deprived or threatened to deprive him of his right and privilege. The entitling factual situation simply does not exist. Therefore, the respondent's suit against UEM is unmaintainable and its application to strike it out should therefore be granted and consequently its appeal be allowed."

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A [33] Abdul Hamid, CJ Malaya (as he then was) in the same case at p. 234, defined what is meant by '*locus standi*' as follows:

B '*Locus standi*' is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have *locus standi*, in effect standing to sue in a Court of Law, if that Court recognises his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant.

D [34] Bearing in mind what was said by Salleh Abas LP and Abdul Hamid, (CJ Malaya) in the *Lim Kit Siang* case, we agree that to enable the appellant to initiate this action they have to show that they have the necessary *locus standi* first.

E [35] On the facts and evidence available, the said properties were registered in the names of the third and ninth respondents which in turn are fully owned by the first respondent. Although, as argued by the appellant's counsel, that they may have a cause of action since the first respondent was formed to help the economic position of the Penang Malays whom he said would be the beneficiaries of the purpose of forming the first respondent, we agree as to what was said by the trial judge in para. 23 of his grounds of judgment that *locus standi* would be a necessary precondition before any party can bring the action. It is not disputed that there is no evidence to show that the appellants neither have a share nor became a trustee or director of the first, third or ninth respondent.

G [36] The same sentiments were echoed by the Court of Appeal in its broad grounds to the effect that it may well be that the appellants were suing the respondents for alleged breaches of trust, fiduciary duties, and so forth. But the fundamental principles of Company Law cannot be disregarded ie, the *sine qua non* for the appellants to bring the action against the respondents is that the appellants have to be members of the third or ninth respondent. In the absence of such membership, the Court of Appeal entirely agreed with the learned High Court Judge that the appellants had no *locus standi* to sue the respondents and therefore the striking out made by the High Court was not wrong.

[37] We have gone through the grounds of judgment of the learned High Court Judge and we are of the view that he had given due consideration to the issues raised, based on the evidence before him, had exercised his discretion correctly in striking out the action on the ground that the appellants had no *locus standi* to bring this action against the respondents. Likewise the Court of Appeal too was right in affirming the High Court decision.

[38] We see no reason to differ with the decisions of the courts below.

[39] We therefore answer the question posed in the negative. The appeal is therefore dismissed with costs.

[40] We now invite parties to address us on the issue of costs.

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